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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE A. SANDOVAL,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Respondent.

Case No. CV 15-2864-KES

MEMORANDUM OPINION
AND ORDER

Plaintiff Jose A. Sandoval appeals the final decision of the Administrative Law Judge (“ALJ”) denying her application for Supplemental Security Income (“SSI”).¹ For the reasons discussed below, the Court concludes that the ALJ did not err in discounting the extreme opinions of a treating psychiatrist, treating physician and a consultative examiner. Accordingly, the decision of the ALJ denying benefits is AFFIRMED.

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¹ Plaintiff is transgender and identifies as a female. Administrative Record (“AR”) 68, 678.

I.**BACKGROUND**

On November 17, 2011, Plaintiff filed an application for SSI, alleging disability beginning on November 20, 2010, when she was 25 years old. AR 70, 186-94. Plaintiff alleges that she is unable to work due to asthma, major depression, AIDS, and insomnia. AR 205.

On June 12, 2013, an ALJ conducted a hearing, at which Plaintiff, who was represented by counsel, appeared and testified with the assistance of a Spanish language interpreter. AR 69-86. A vocational expert ("VE") also testified. AR 86-90.

On June 26, 2013, the ALJ issued a written decision denying Plaintiff's request for benefits. AR 49-60. The ALJ found that Plaintiff had the severe impairments of asthma, sexual reassignment,² human immunodeficiency virus ("HIV"), depression, anxiety, and substance abuse. AR 52. Notwithstanding her impairments, the ALJ concluded that Plaintiff had the residual functional capacity ("RFC") to perform light work, except she was able to perform work that did not require literacy in English; she must avoid concentrated exposure to dust, fumes, and chemicals; she must avoid public contact; and she was limited to simple tasks. AR 54. The ALJ determined that Plaintiff had no past relevant work, but there were jobs that existed in significant numbers in the national economy that she could perform, including the jobs of small products assembler, inspector and hand packager, and housecleaner. AR 59-60, 86-87. The ALJ thus found that Plaintiff was not disabled. AR 60.

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² Plaintiff indicated that she was taking hormones, but had not had any surgeries. AR 79.

1 **II.**

2 **ISSUES PRESENTED**

3 The parties dispute whether the ALJ erred in rejecting the opinions of
4 Plaintiff's two treating physicians and a consultative examiner.

5 **III.**

6 **DISCUSSION**

7 **A. The ALJ Did Not Err In Evaluating The Medical Evidence.**

8 Plaintiff contends that the ALJ improperly evaluated the opinions of
9 three medical sources: (1) Dr. Konstantinos Tripodis, Plaintiff's treating
10 psychiatrist; (2) Dr. Michael Soles, Plaintiff's treating physician; and (3) Dr.
11 Stephen Erhart, a State Agency psychiatric consultative examiner. Dkt. 29 at
12 4-13. Plaintiff alleges that each medical source provided opinions that
13 supported greater limitations than those found by the ALJ. Id.

14 **1. Relevant Background.**

15 **a. Dr. Erhart.**

16 Dr. Erhart performed a psychiatric evaluation of Plaintiff on May 10,
17 2012. AR 678-83. He administered a mental status examination and found
18 multiple well-healed self-mutilation marks on both arms; consistently hesitant
19 and occasionally diffident conduct; repeatedly solipsistic (evidencing lack of
20 awareness of other people's points of view) answers; spontaneous and fluent
21 speech; intact orientation, concentration, registration and recall; subdued
22 mood; restricted affect; no hallucinations or perceptual disturbances; no
23 current suicidal ideation; noteworthy for depression and borderline
24 phenomena; goal directed thought process; and limited insight and judgment.
25 AR 681-82. He diagnosed Plaintiff with major depression: single episode,
26 alcohol and methamphetamine dependence in full sustained remission,
27 borderline personality traits, and a GAF score of 60. AR 682.

28 He opined that Plaintiff's ability to understand, remember and perform

1 instructions for simple and complex tasks was intact; her ability to maintain
2 focus and concentration was mildly impaired; her ability to interact with the
3 public, coworkers and supervisor was severely impaired “evidenced by cross
4 sectional resentment during interview and a described predisposition to
5 aggression with conflicts;” her ability to comply with job rules “such as safety
6 and attendance” was moderately impaired; and her ability to respond to work
7 pressure in a usual work setting was moderately impaired. AR 682-83.

8 b. Dr. Soles.

9 Dr. Soles completed a Physical RFC Questionnaire and a Physician
10 Statement, both dated April 9, 2013. AR 822-28. He indicated that he had
11 treated Plaintiff since February 4, 2011. AR 822, 827. He diagnosed Plaintiff
12 with AIDS, transgender, depression, history of suicide attempt, and asthma.
13 AR 822. He listed Plaintiff’s symptoms as “severe depression unable to work
14 [secondary] to stress.” Id. He identified clinical findings of “cut marks on
15 arms,” viral load, and latest T-cell count, and objective findings of AIDS with
16 severe depression, and history of suicide ideation and attempt. AR 822, 828.
17 He opined that Plaintiff was incapable of even “low stress” jobs because she
18 “has tried suicide 3 times,” and that Plaintiff was unable to work “as we have a
19 lot of difficulty controlling depression.” AR 823, 826.

20 c. Dr. Tripodis.

21 Dr. Tripodis, a psychiatrist with the Los Angeles County Department of
22 Mental Health, provided treatment records corresponding to Plaintiff’s visits.
23 Those records are summarized as follows:

24 • 9/12/11: On Plaintiff’s initial visit, she signed a “client care
25 coordination plan.” That plan lists as a goal for Plaintiff to “attend support
26 group in the community for support and symptom management,” among other
27 things. AR 460. This initial visit also included (1) “diagnosis information”
28 including major depressive disorder, asthma, AIDS and substance abuse (AR

1 464); (2) an “initial assessment” noting symptoms and history reported by
2 Plaintiff (AR 465-68), (3) a “mental status evaluation” noting initial
3 observations (AR 469-70); (4) an “adult mental health triage” form noting
4 symptoms and history reported by Plaintiff (AR 473-75); and (5) forms related
5 to substance abuse (AR 476-79). It is unclear what role, if any, Dr. Tripodis
6 played in this initial assessment.

7 • 9/13/11: The clinical team determined that Plaintiff’s case would be
8 “assigned to Dr. Tripodis for medication services.” AR 522.

9 • 9/23/11: “Complex Medication Support Service” form completed by
10 Dr. Tripodis. AR 529, 572. The form notes “good” adherence to medication,
11 but “poor response to Celexa.” Id. The plan is to discontinue Celexa and start
12 other medications. AR 530, 573.

13 • 11/1/11: “Brief Follow-Up Medication Support Service” form
14 completed by Dr. Tripodis. AR 528, 571. The form notes “adherence to
15 medication” is “good,” but treatment response is “poor.” Id. The form also
16 notes “stable client chronic depression” and intent to try different medication.
17 Id.

18 • 12/6/11: “Brief Follow-Up Medication Support Service” form
19 completed by Dr. Tripodis. AR 527, 570. The form notes “adherence to
20 medication” is “good” and “stabilized client.” Id.

21 • 3/13/12: “Brief Follow-Up Medication Support Service” form
22 completed by Dr. Tripodis. AR 526, 569. The form notes “adherence to
23 medication” is “good.” Id.

24 • 7/3/12: “Brief Follow-Up Medication Support Service” form
25 completed by Dr. Tripodis. AR 568. The form notes “adherence to
26 medication” is “good,” but treatment response is “poor,” so Dr. Tripodis
27 increased the dosage of medication. Id.

28 • 8/9/12: “Brief Follow-Up Medication Support Service” form

1 completed by Dr. Tripodis. AR 567. The form notes “adherence to
2 medication” and “treatment response” are “good.” Id.

3 • 10/4/12: “Brief Follow-Up Medication Support Service” form
4 completed by Dr. Tripodis. AR 566. The form notes “adherence to
5 medication” and “treatment response” are “good,” and patient is “stable.” Id.³

6 In addition to these treating records, Dr. Tripodis completed a Mental
7 RFC Questionnaire, dated May 20, 2013. AR 817-21.⁴ He indicated that he
8 had treated Plaintiff since September 12, 2011, and saw her every three
9 months. AR 817. He diagnosed Plaintiff with post-traumatic stress disorder
10 with psychotic features, major depressive disorder, and assigned a GAF score
11 of 43. Id. He noted that Plaintiff was compliant with medication and adhered
12 to appointments, but had to be reminded and prompted of her appointments.
13 Id. He listed “clinical findings” of “episodes of depression, auditory
14 hallucinations, visual hallucinations, isolat[ion], feelings of worthlessness, low
15 self-esteem, history of suicide ideation, low energy, racing thoughts,
16 hypervigilance, paranoid thinking, fearful regarding the future, frequent crying
17 spells, flashbacks and intrusive thoughts, fear of being around others.” Id.

18 He identified Plaintiff’s symptoms by checking boxes corresponding to
19 the following: anhedonia or pervasive loss of interest in almost all activities;
20 appetite disturbance with weight change; thoughts of suicide; feelings of guilt
21 or worthlessness; recurrent and intrusive recollections of a traumatic
22

23 ³ At the 2013 hearing, Plaintiff testified that her medication “helps ... a
24 little.” AR 73. Since Plaintiff had stopped seeing Dr. Tripodis by that time, it is
25 unclear who, if anyone, was prescribing anti-depressants for Plaintiff in June
26 2013. AR 804-08.

27 ⁴ Plaintiff chose to discontinue treatment in 2012 and her file was closed
28 in March 2013 due to her lack of participation. AR 804.

1 experience, which are a source of marked distress; persistent disturbances of
2 mood or affect; paranoid thinking or inappropriate suspiciousness; recurrent
3 obsessions or compulsions which are a source of marked distress; substance
4 dependence; emotional withdrawal or isolation; intense and unstable
5 interpersonal relationships and impulsive and damaging behavior;
6 hallucinations or delusions; deeply ingrained, maladaptive patterns of
7 behavior; vigilance and scanning; pathologically inappropriate suspiciousness
8 or hostility; memory impairment; sleep disturbance; persistent irrational fear of
9 a specific object, activity, or situation which results in a compelling desire to
10 avoid the dreaded object, activity or situation; and involvement in activities
11 that have a high probability of painful consequences which are not recognized.
12 AR 818-19.

13 Part of the form asked Dr. Tripodis to evaluate Plaintiff's "mental
14 abilities and aptitudes" needed to do unskilled work. The form listed 16 skills
15 and gave Dr. Tripodis the choice for each of assigning one of five ratings:
16 (1) unlimited or very good, (2) limited but satisfactory, (3) seriously limited,
17 but not precluded, (4) unable to meet competitive standards (defined on the
18 form as "patient cannot satisfactorily perform this activity independently,
19 appropriately, effectively and on a sustained basis in a regular work setting),
20 and (5) no useful ability to function (defined as "patient cannot perform this
21 activity in a regular work setting). AR 819.

22 Of the 16 skills, Dr. Tripodis left most of the rows blank. The only
23 ratings he assigned were as to the following 6 skills, for all of which he marked
24 "unable to meet competitive standards:" maintaining regular attendance and
25 being punctual within customary, usually strict tolerances; working in
26 coordination with or proximity to others without being unduly distracted;
27 completing a normal workday and workweek without interruptions from
28 psychologically based symptoms; accepting instructions and responding

1 appropriately to criticism from supervisors; getting along with co-workers or
2 peers without unduly distracting them or exhibiting behavioral extremes; and
3 dealing with normal work stress. AR 819. For any ratings in the three most
4 limited categories (including “unable to meet competitive standards”), the
5 form asked Dr. Tripodis to “include the medical/clinical findings that support
6 this assessment,” but he left that part of the form blank. AR 819.

7 The form also asked Dr. Tripodis to rate 4 skills associated with semi-
8 skilled or skilled work. AR 820. Dr. Tripodis opined Plaintiff was “unable to
9 meet competitive standards” as to all four: understanding and remembering
10 detailed instructions; carrying out detailed instructions; setting realistic goals or
11 making plans independently of others; and dealing with stress of semiskilled
12 and skilled work. Id. Again, he left blank the portion of the form asking for an
13 explanation. Id.

14 Finally, the form asked Dr. Tripodis to rate 5 skills associated with
15 “particular types of jobs.” Id. Dr. Tripodis indicated that Plaintiff was
16 “unable to meet competitive standards” in the areas of interacting
17 appropriately with the general public and maintaining socially appropriate
18 behavior; had “no useful ability to function” travelling to unfamiliar places;
19 and he left blank any assessment of Plaintiff’s ability to use public
20 transportation or maintain basic standards of neatness and cleanliness. Id.
21 Again, he left the portion of the form asking for an explanation blank. Id.

22 Following these charts, he indicated that Plaintiff does not have
23 “reduced intellectual functioning,” but would be absent from work more than
24 four days per month due to her impairments or treatment. AR 820-21. He
25 added that Plaintiff had difficulty concentrating and retaining information due
26 to intrusive thoughts, flashbacks, low energy, fatigue, auditory and visual
27 hallucinations, fear of being around others, and isolation. AR 821.

28 //

1 d. Medical Opinions Compared to Plaintiff's RFC.

2 Although the ALJ stated that she was giving the opinions of these three
3 doctors reduced weight, her RFC nevertheless incorporates or moots many of
4 their opinions. For example, the RFC limited Plaintiff to "simple tasks." This
5 limitation is consistent with a limitation to "unskilled" work, which is defined
6 to mean "work which needs little or no judgment to do simple duties that can
7 be learned on the job in a short period of time." 20 C.F.R. § 404.1568 (a).
8 This limitation, therefore, moots any opinions about Plaintiff's difficulties
9 performing tasks associated with skilled or semi-skilled work.

10 The RFC also limits Plaintiff to jobs in which she can "avoid public
11 contact." AR 54. In addition, the hypothetical question posed to the VE
12 included that Plaintiff have only "occasional" interactions with coworkers or
13 others. AR 86. The VE testified that the jobs he identified as consistent with
14 Plaintiff's RFC required "less than occasional contact with coworkers and
15 supervisors." AR 87. These limitations address opinions that Plaintiff has
16 mild or moderate difficulties in the area of social functioning and coping with
17 stress since social interactions are stressors for Plaintiff. By restricting Plaintiff
18 to a job involving only simple tasks and minimal social interactions, the RFC
19 does not contemplate that Plaintiff would work in a "regular work setting."
20 Dr. Tripodis's opinions about Plaintiff's difficulties meeting competitive
21 standards in a "regular work setting" are therefore moot.

22 Discrediting opinions that were ultimately incorporated into the RFC or
23 are irrelevant to the ALJ's ultimate determination of disability, even if error, is
24 harmless error. Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th
25 Cir. 2006) (error harmless where mistake was irrelevant to the ALJ's ultimate
26 disability conclusion). That said, there are opinions within the reports of these
27 three doctors that are inconsistent with Plaintiff working even under the
28 limitations imposed by the RFC, e.g., (1) Dr. Tripodis's opinion that Plaintiff

1 will miss work more than four times each month⁵ and (2) Dr. Erhart's opinion
 2 that Plaintiff's ability to interact with coworkers or supervisors is "severely"
 3 impaired due to "resentfulness" and "a described predisposition to aggression
 4 with conflicts."⁶ AR 821, 682-83. The Court, therefore, in reviewing the
 5 ALJ's stated reasons for discrediting the opinions of Drs. Tripodis and Erhart,
 6 focuses on the validity of the ALJ's reasons as applied to these two opinions.

7 **2. Applicable Law.**

8 Three types of physicians may offer opinions in Social Security cases:
 9 (1) those who directly treated the plaintiff, (2) those who examined but did not
 10 treat the plaintiff, and (3) those who did neither. Lester v. Chater, 81 F.3d 821,
 11 830 (9th Cir. 1995). A treating physician's opinion is generally entitled to
 12 more weight than that of an examining physician, and an examining
 13 physician's opinion is generally entitled to more weight than that of a non-
 14 examining physician. Id. When a treating or examining physician's opinion is
 15 not contradicted by another doctor, it may be rejected only for "clear and
 16 convincing" reasons. See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d
 17 1155, 1164 (9th Cir. 2008) (citing Lester, 81 F.3d at 830-31). When it is
 18 contradicted, the ALJ must provide only "specific and legitimate reasons" for
 19 discounting it. Id. (citation omitted). The weight given a physician's opinion
 20

21 ⁵ The ALJ implicitly found that with the limitations set forth in the RFC,
 22 Plaintiff would not be absent more than 2 times each month. AR 86 (VE
 23 testified that hypothetical person could not be absent more than twice a month
 and maintain employment in identified jobs).

24 ⁶ At the hearing, Plaintiff's counsel suggested that a "severe" impairment
 25 meant "the individual would basically have almost no ability to interact with
 26 coworkers and supervisors." AR 88. The VE testified that in any work setting,
 27 "there would be a requirement for at least some interaction on a daily basis
 with coworkers and supervisors," but perhaps as little as 10% of the time. Id.
 28

1 depends on whether it is consistent with the record and accompanied by
2 adequate explanation, the nature and extent of the treatment relationship, and
3 the doctor's specialty, among other things. 20 C.F.R. § 416.927(c)(3)-(6).

4 **3. Analysis.**

5 a. Dr. Soles.

6 The ALJ gave "very little weight" to the opinion of Dr. Soles that
7 Plaintiff was unable to work due to severe, uncontrolled depression for two
8 reasons: (1) the opinion was brief and conclusory; and (2) the opinion was on
9 an issue reserved to the Commissioner. AR 58. The ALJ noted that Dr. Soles
10 provided very little specific information regarding Plaintiff's symptoms and
11 limitations, and merely concluded as a general matter that Plaintiff was unable
12 to work. Id.

13 The ALJ correctly found Dr. Soles's opinion brief and conclusory. See
14 Chaudhry v. Astrue, 688 F.3d 661, 671 (9th Cir. 2012) ("The ALJ need not
15 accept the opinion of any physician, including a treating physician, if that
16 opinion is brief, conclusory, and inadequately supported by clinical findings.")
17 (citation omitted). Dr. Soles did not specify how frequently he saw Plaintiff
18 over the past two years. AR 822, 827. He described Plaintiff's symptoms as
19 "severe depression unable to work [secondary] to stress," and he identified
20 clinical findings as "cut marks on arms," viral load, and latest T-cell count.
21 AR 822, 828. He did not identify any specific functional limitations, and
22 instead wrote "N/A depression precludes work." AR 823-24.

23 The ALJ is correct that a determination of a claimant's ultimate
24 disability is reserved to the Commissioner. 20 C.F.R. § 416.927(d);
25 Thornsberry v. Colvin, 552 F. App'x 691, 692 (9th Cir. 2014) ("[A] doctor's
26 opinion that a claimant is disabled is not itself a medical opinion but an issue
27 reserved exclusively for the Commissioner.") (citing 20 C.F.R.
28 § 416.927(d)(1)). Contrary to Plaintiff's argument, the ALJ thoroughly

1 discussed Dr. Soles' opinion and properly found it inconclusive on the ultimate
 2 issue of disability. Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989).
 3 Accordingly, the ALJ gave specific and legitimate reasons for giving Dr.
 4 Soles's opinion reduced weight.

5 b. Dr. Erhart.

6 The ALJ gave "limited weight" to Dr. Erhart's opinion that Plaintiff's
 7 social functioning was "severely" impaired for two reasons: (1) the opinion
 8 was "somewhat inconsistent" with Dr. Erhart's report; and (2) the opinion was
 9 "somewhat at odds" with the remainder of the record. AR 57.

10 In finding Dr. Erhart's opinion "somewhat inconsistent" with his report,
 11 the ALJ noted that Dr. Erhart's opinion was inconsistent with his GAF score
 12 of 60, the abnormalities identified by Dr. Erhart "seemed relatively mild," and
 13 the mental status examination documented "largely normal cognitive
 14 functioning." AR 57. An ALJ may properly reject a medical source opinion
 15 that is inconsistent with his report. See Valentine v. Comm'r Soc. Sec.
 16 Admin., 574 F.3d 685, 692-93 (9th Cir. 2009) (contradiction between treating
 17 physician's opinion and his treatment notes constitutes specific and legitimate
 18 reason for rejecting opinion); Downing v. Barnhart, 167 F. App'x 652, 653 (9th
 19 Cir. 2006) ("[A]n ALJ may reject all or part of an examining physician's report
 20 if it contains inconsistencies.") (citing Morgan v. Comm'r, Soc. Sec. Admin.,
 21 169 F.3d 595, 603 (9th Cir. 1999)).

22 Plaintiff's GAF score of 51-60 indicates moderate symptoms (e.g., flat
 23 affect, circumstantial speech, occasional panic attacks) or moderate difficulty
 24 in social, occupational, or school functioning (e.g., few friends, conflicts with
 25 peers or coworkers).⁷ A merely moderate difficulty with social functioning is

26
 27 ⁷ American Psychiatric Association, Diagnostic and Statistical
 28 Manual of Mental Disorders, 34 (4th ed. 2000). The ALJ was incorrect in

1 inconsistent with Dr. Erhart's opinion that Plaintiff's social functioning is so
 2 "severely" limited that she has "almost no ability to interact with coworkers
 3 and supervisors." Cf., AR 88 and 682-83.

4 Accordingly, the ALJ set forth at least one sufficiently specific and
 5 legitimate reasons for discounting Dr. Erhart's opinions. The ALJ did not err
 6 in determining that while Plaintiff's impairments in the area of social
 7 functioning limit her to a job with no public contact and less than occasional
 8 contact with coworkers and supervisors, they do not preclude Plaintiff from
 9 working altogether.

10 c. Dr. Tripodis.

11 The ALJ gave "very little weight" to Dr. Tripodis's opinion that Plaintiff
 12 was unable to perform even unskilled work for two reasons: (1) Dr. Tripodis
 13 treated Plaintiff only "on a handful of occasions," making his familiarity with
 14 Plaintiff's level of functioning "questionable;" and (2) "aside from [Plaintiff's]
 15 subjective statements, there is very little in treatment records" to support the
 16 "extreme nature" of Dr. Tripodis's opinion. AR 58.⁸

17 The ALJ's rejection of Dr. Tripodis's opinion on the basis that he had
 18 treated Plaintiff only "on a handful of occasions" was improper. The parties

19 stating that a GAF score of 60 is indicative of "mild" symptoms. AR 57; see
 20 also Chase v. Colvin, 2014 U.S. Dist. LEXIS 128206 at *10 n.5 (N.D. Cal.
 21 Sept. 12, 2014) ("A GAF score is a rough estimate of an individual's
 22 psychological, social, and occupational functioning used to reflect the
 23 individual's need for treatment. The score ranges from zero to 100, and it
 24 serves as a subjective determination that represents the clinician's judgment of
 25 the individual's overall level of functioning. A GAF score of 51 to 60 indicates
 only moderate difficulty in functioning.") (internal citations omitted).

26 ⁸ The ALJ discredited Plaintiff's testimony about the disabling nature of
 27 her symptoms because Plaintiff gave inconsistent statements about the reason
 28 her prior employment at Party City ended, among other reasons. AR 56.

1 agree that Dr. Tripodis saw Plaintiff seven times between September 2011 and
2 October 2012. Dkt. 29 at 9, 14-15. Dr. Tripodis saw Plaintiff for complex
3 medication support service for major depressive disorder. AR 526-30, 566-73.
4 Dr. Tripodis was part of a clinical team at the Los Angeles County
5 Department of Mental Health that included social workers with whom
6 Plaintiff interacted more frequently, who discussed Plaintiff's medication-
7 related questions with Dr. Tripodis, and whose notes were presumably
8 available to him. AR 522.

9 The ALJ provided no basis for her assumption that Dr. Tripodis did not
10 form a longitudinal picture of Plaintiff's psychiatric impairments over those
11 seven visits, which occurred over 14 months. See 20 C.F.R. § 416.927(c)(2)(i)
12 (a treating physician's opinion should be afforded great weight so long as the
13 physician has seen the claimant "a number of times and long enough to have
14 obtained a longitudinal picture of [the claimant's] impairment").

15 The Court next considers the ALJ's rejection of Dr. Tripodis's opinion
16 on the basis that there was "very little" in the treatment records, aside from
17 Plaintiff's subjective reports, to support Dr. Tripodis's opinion that Plaintiff
18 would miss more than four days of work each month because of her
19 psychiatric impairments or treatment.⁹ Dr. Tripodis failed to explain the basis
20 of his opinion concerning Plaintiff's excessive absenteeism. He may be basing
21 it on Plaintiff's (1) need to attend medical appointments, (2) desire to avoid
22

23 ⁹ The ALJ found that Plaintiff had the severe psychiatric impairments of
24 depression, anxiety and substance abuse. AR 52. Plaintiff admitted to using
25 methamphetamines, marijuana, and drinking "a lot" of alcohol during the
26 claimed period of disability and while receiving treatment from Dr. Tripodis.
27 AR 84-85, 800. Dr. Tripodis, however, opined that in 2013, (i.e., after his
28 treating relationship with Plaintiff ended) that none of Plaintiff's functional
limitations were attributable to substance abuse. AR 821.

1 workplace stressors, (3) fatigue rendering Plaintiff physically incapable of
2 going to work, (4) inability to understand or remember the need to go to work,
3 or (5) inability to drive or use public transportation to get to work.

4 If Dr. Tripodis's rationale was either nos. (1), (3), or (4), then the ALJ
5 correctly determined that his opinion is not supported by his own treating
6 records. The record contains no information concerning the anticipated
7 schedule for Plaintiff's future appointments, and it seems unlikely that
8 appointments could not be scheduled so as to avoid conflict with working
9 hours most of the time. After all, "Depression is very common and many
10 people work with it." Clark v. Comm'r of Soc. Sec., 2014 U.S. Dist. LEXIS
11 117630 at * 14 (E.D. Cal. Aug. 22, 2014). With regard to fatigue,
12 "drowsiness" and "dizziness" are potential side effects of medications Dr.
13 Tripodis prescribed in 2011, but not in 2012. Cf., AR 531 and AR 574.
14 Nothing in the treating records suggests that Plaintiff is so fatigued that she
15 cannot get out of bed when motivated to do so.¹⁰ She is, for example, able to
16 attend medical appointments, group therapy sessions, and meetings with her
17 social worker. AR 492. She was able to go to Lancaster with a friend. AR
18 560. She goes out to lunch with friend Juan Rodriguez. AR 215. With regard
19 to understanding and memory, Dr. Tripodis opined that she has does not have
20 "reduced intellectual functioning" and has "good" adherence to her prescribed
21 medications. AR 821, 566. While she may need reminders concerning
22 sporadic medical appointments, that fact does not support an opinion that she
23 would miss work more than four times a month because she would be unable
24 to understand or remember the need to go to work Monday through Friday.

25
26 ¹⁰ At the hearing, when Plaintiff indicated that she did not "have the
27 desire" to leave her house, the ALJ explained that lack of motivation is not a
28 basis for collecting disability benefits. AR 72.

1 With regard to avoiding workplace stress, the treating records have
 2 ample evidence that Plaintiff responds poorly to stress and finds interacting
 3 with others stressful. See, e.g., AR 793. Dr. Tripodis's opinions, however,
 4 concern Plaintiff's functional limitations in a "regular work setting," whereas
 5 the ALJ limited Plaintiff to work involving only "simple" tasks with no contact
 6 with the public and less than occasional contact with coworkers or supervisors.
 7 There is no opinion in the record from Dr. Tripodis or any other medical
 8 source that Plaintiff would miss work more than four times a month even if her
 9 work environment were limited to no contact with the public and less than
 10 occasional contact with coworkers or supervisors.

11 Finally, with regard to transportation, Dr. Tripodis did not offer any
 12 opinion as to whether Plaintiff could use public transportation, choosing to
 13 leave that row of the form blank. AR 820. It does not logically follow that
 14 travel to work would be travel to an "unfamiliar" place, since Plaintiff would
 15 be travelling to the same location repeatedly and would acquire familiarity.
 16 The ALJ did not err in discounting a doctor's opinion for lack of support when
 17 the doctor chose to leave a relevant field blank.

18 Accordingly, by citing lack of support from his own treatment records,
 19 the ALJ gave a specific and legitimate reason for discrediting Dr. Tripodis's
 20 opinion that Plaintiff would miss work at least four times a month.

21 IV.

22 CONCLUSION

23 Based on the foregoing, IT IS ORDERED THAT judgment shall be
 24 entered AFFIRMING the decision of the Commissioner denying benefits.

25
 26 Dated: May 24, 2016

Karen E. Scott

27 KAREN E. SCOTT
 28 United States Magistrate Judge